

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE,
EASTERN DIVISION**

RANDY MARTIN,

Plaintiff,

vs.

No. 1:11-cv-1204-JDB-egb

**PERFORMANCE BOAT BROKERAGE.
COM, LLC and MATTHEW EDWARD
SMITH,**

Defendants.

REPORT AND RECOMMENDATION

This cause came to be heard on the 23rd day of August, 2011, upon motion by Defendants to continue the hearing set for August 24, 2011 on Plaintiff's Motion for Contempt and Sanctions. The parties have submitted the following proposed Order, which the Magistrate Judge recommends be adopted:

1. A preliminary injunction was granted by this Court on July 14, 2011 prohibiting Defendants from selling the business known as Performance Boat Brokerage.com, LLC. In the same preliminary injunction this Court ordered that the Defendants be enjoined from selling any of the assets of Performance Boat Brokerage.com, LLC except in the normal and ordinary course of business without permission of the court.
2. Plaintiff filed his Motion for Contempt and Sanctions on August 11, 2011.
3. Plaintiff filed his Supplemental Memorandum in Support of his Motion for Contempt and Sanctions on August 12, 2011.
4. On August 12, 2011, this Court referred this matter to the United States Magistrate Judge for a report and recommendation.
5. On August 17, 2011, Plaintiff filed a Motion for an Expedited Hearing.
6. On August 19, 2011 this Court granted Plaintiff's Motion for an Expedited Hearing and issued a Setting Letter setting the hearing for August 24, 2011 at 10:00 a.m.
7. On August 23, 2011, Defendants filed a Motion for Continuance of the Expedited Hearing and requested a phone hearing regarding the same.
8. On August 23, 2011 this matter was heard by the Magistrate Judge with counsel for Plaintiff and Defendants being present by phone.
9. A scheduling conflict prevents counsel for Defendants from being able to attend the hearing set for August 24, 2011. In addition, the Defendants are involved in a week-long boat extravaganza that appears to be essential to the financial welfare of the

business known as Performance Boat Brokerage.com, LLC.

10. Based on documents filed by Plaintiff in this matter there is evidence that might indicate the Court Order dated July 14, 2011 has been violated.
11. It appears that postponing the hearing set for August 24, 2011 could result in the transfer of funds that would complete the sale of the business known as Performance Boat Brokerage.com, LLC or in other similar transfers of funds or assets. And, that Plaintiff would likely be damaged by such a transfer, if it were to occur.
12. Although this Court has good cause to believe that a continuance is in order, it also appears that Plaintiff would likely be damaged if a transfer of funds or assets occurred prior to any rescheduled hearing date.

It is, therefore, Ordered, Adjudged, and Decreed:

- A. That Defendant Matthew E. Smith deposit the sum of twenty-five thousand dollars (\$25,000.00) into the trust fund of Rainey, Kizer, Reviere and Bell on or before the 26th of August, 2011 to be held in that same trust fund pending further orders from this Court.
- B. That the Court Order dated July 14, 2011 remain in effect and that no assets or funds of any business owned by Matthew E. Smith on the date of this Order or on the date of the Order dated July 14, 2011 shall be transferred, removed, sold, or otherwise manipulated in any way until this Court orders otherwise.
- C. That any sale of the assets of the business known as Performance Boat Brokerage.com, LLC or Performance, LLC be prohibited and any transfer of funds or assets associated with the sale be prohibited as well, pending further order from this Court.
- D. That any transfer of assets or funds associated with any previous sale of Performance Boat Brokerage.com, LLC be prohibited pending further order from this Court.
- E. Nothing contained herein shall prevent any of the listed parties and/or business from transferring, selling or otherwise disposing of assets within the normal course and scope of business.
- F. That Defendant Matthew E. Smith, Brett Manire, and Mark Waddington be present at the August 30, 2011 hearing at 10:00 in this Court and show cause why Plaintiff's Motion for Contempt and Sanctions should not be granted.

The Court finds that because the proposed order contains injunctive relief the Magistrate Judge cannot make a determination on the matter but does recommend that the proposed consent order be adopted by the District Court.

Respectfully submitted this 30th day of August, 2011.

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.